

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION**

<b>FIRST BANK &amp; TRUST,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>REAGOR AUTO MALL, LTD. d/b/a</b>	§	
<b>REAGOR-DYKES OF LEVELLAND</b>	§	<b>Civil Action No. 5:18-cv-00234-c</b>
<b>and d/b/a REAGOR-DYKES</b>	§	
<b>IMPORTS, FIRSTCAPITAL BANK</b>	§	
<b>OF TEXAS, N.A., BART REAGOR,</b>	§	
<b>RICK DYKES, SHANE SMITH,</b>	§	
<b>SHEILA MILLER, BRAD D.</b>	§	
<b>BURGESS, AND KENNETH L.</b>	§	
<b>BURGESS,</b>	§	
	§	
<b>Defendants.</b>	§	

**SHEILA MILLER’S ANSWER TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW **SHEILA MILLER** [“Sheila”] who files this *Answer to Plaintiff’s First Amended Complaint and Application for Writ of Sequestration* [“Complaint”], and in support thereof would show:

**I. NATURE OF THE ACTION**

1. Sheila is without sufficient information to admit or deny, should same be necessary, the allegations stated in section I of the Complaint, as she was merely an employee or agent of the owners of the accounts in question.

**II. PARTIES**

2. Sheila is without sufficient information to admit or deny, should same be necessary, the party

identification allegations stated in paragraphs 1 through 6 and 8 and 9, of the Complaint. Sheila denies that she may be served at 1111 19<sup>th</sup> Street, as alleged in paragraph 7 of the Complaint, but admits the remaining statements regarding her in this paragraph.

### **III. JURISDICTION AND VENUE**

3. Sheila is without sufficient information to admit or deny the statements of jurisdiction and/or venue as set out in paragraph 10 of the Complaint, but does not dispute their accuracy at this time.

### **IV. FACTUAL ALLEGATIONS**

#### **A. The RD-Levelland Agreements**

4. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 11 - 26 of the Complaint.

#### **B. The RD-Imports Agreements**

5. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 27 - 42 of the Complaint.

#### **C. The Defaults**

6. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 43 - 51 of the Complaint.

#### **D. The RAM Check-Kiting Scheme and Resulting Overdrafts**

7. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 52 - 57 of the Complaint.

8. Sheila generally admits the allegations contained in paragraph 58 of the Complaint, but denies that she participated in the alleged “RAM Check-Kiting Scheme” as it is characterized by Plaintiff.

9. Sheila denies the allegations of her personal liability contained in paragraph 59 of the

Complaint and states that the document attached as Exhibit L to the Complaint - in its entirety - speaks for itself.

10. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 60 - 84 of the Complaint.

## **V. CLAIMS FOR RELIEF**

### **A. Count 1: Breach of the RD-Levelland Business Loan Agreement (against RAM)**

11. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 85 - 91 of the Complaint.

### **B. Count 2: Breach of the RD-Levelland Promissory Note (against RAM)**

12. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 92 - 98 of the Complaint.

### **C. Count 3: Breach of the RD-Levelland Security Agreement (against RAM)**

13. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 99 - 105 of the Complaint.

### **D. Count 4: Breach of RD-Levelland Reagor Commercial Guaranty (against Reagor)**

14. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 106 - 113 of the Complaint.

### **E. Count 5: Breach of RD-Levelland Dykes Commercial Guaranty (against Dykes)**

15. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 114 - 121 of the Complaint.

### **F. Count 6: Breach of the RD-Imports Business Loan Agreement (against RAM)**

16. Sheila is without sufficient information to admit or deny the allegations contained in

paragraphs 122 - 128 of the Complaint.

**G. Count 7: Breach of the RD-Imports Promissory Note (against RAM)**

17. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 129 - 135 of the Complaint.

**H. Count 8: Breach of the RD-Imports Security Agreement (against RAM)**

18. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 136 - 142 of the Complaint.

**I. Count 9: Breach of the RD-Imports Reagor Commercial Guaranty (against Reagor)**

19. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 143 - 150 of the Complaint.

**J. Count 10: Breach of the RD-Imports Dykes Commercial Guaranty (against Dykes)**

20. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 151 - 158 of the Complaint.

**K. Count 11: Application for a Writ of Sequestration against RAM**

21. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 159 - 174 of the Complaint.

**L. Count 12: Recovery of Overdraft/Refund under UCC 4.124 (against RAM)**

22. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 175 - 178 of the Complaint.

**M. Count 13: Fraud (against Defendants RAM and Smith)**

23. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 179 - 185 of the Complaint.

**N. Count 14: Money Had and Received/Unjust Enrichment/Restitution (against RAM and FirstCapital)**

24. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 186 - 189 of the Complaint.

**O. Count 15: Conversion (against RAM and FirstCapital)**

25. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 190 - 193 of the Complaint.

**P. Count 16: Statutory Liability Under the Expedited Funds Availability Act and Federal Reserve Regulation CC (against FirstCapital)**

26. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 194 - 197 of the Complaint.

**Q. Count 17: Liability under Tex.Bus. & Com. Code ("UCC") (against FirstCapital)**

27. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 198 - 203 of the Complaint.

**R. Count 18: Breach of Account Agreement (against Reagor, Dykes, Smith, and Miller)**

28. Sheila is without sufficient information to admit or deny the allegations against Reagor, Dykes and Smith contained in paragraphs 205 - 209 of the Complaint. Sheila denies the allegations against her contained in paragraphs 205 - 209 of the Complaint.

**S. Count 19: Conspiracy to Commit Fraud (against FirstCapital and the Burgess Defendants)**

29. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 210 - 214 of the Complaint.

**T. Count 20: Aiding and Abetting Fraud (against FirstCapital and the Burgess Defendants)**

30. Sheila is without sufficient information to admit or deny the allegations contained in paragraphs 215 - 218 of the Complaint.

#### **VI. EXEMPLARY DAMAGES**

31. Sheila is without sufficient information to admit or deny the allegations contained in paragraph 219 of the Complaint.

#### **VII. ATTORNEYS' FEES AND COSTS**

32. Sheila is without sufficient information to admit or deny the allegations contained in paragraph 220 of the Complaint.

#### **VIII. CONDITIONS PRECEDENT**

33. Sheila is without sufficient information to admit or deny the allegations as to all other Defendants contained in paragraph 221 of the Complaint. Sheila denies the allegations as to her contained in paragraph 221 of the Complaint.

#### **IX. PRAYER FOR RELIEF**

34. Sheila is without sufficient information to admit or deny Plaintiff's entitlement to the relief prayed for in section IX of the Complaint. Sheila denies that Plaintiff is entitled to recover as against her to the extent relief is requested against Sheila in section IX of the Complaint.

#### **ATTORNEY'S FEES**

35. It has been necessary for this Sheila to retain the services of the undersigned attorney to vindicate her rights, and this Defendant seeks an award of her reasonable and necessary defensive attorney's fees incurred herein.

WHEREFORE, PREMISES CONSIDERED, **SHEILA MILLER** prays that Plaintiff take nothing from her by way of its *Petition* and that this Defendant recover her reasonable and necessary

attorney's fees, and such other and further relief, both legal and equitable, to which she may show herself entitled.

Respectfully submitted,

**LAW OFFICE OF MICHAEL H. CARPER, P.C.**  
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By: /s/Robert N. Nebb  
Robert N. Nebb  
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**CERTIFICATE OF SERVICE**

I certify that, on October 8, 2018, a true and correct copy of the foregoing document was filed and served via ECF upon all attorneys of record.

/s/Robert N. Nebb  
Robert N. Nebb